

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

WATER COUNCIL

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In Re: Town of Newport Appeal
Docket No. 04-19 WC

In Re: Thaddeus Dymon Appeal
Docket No. 04-18 WC

ASSENTED-TO MOTION TO STAY PROCEEDINGS

NOW COMES the Town of Newport ("Town"), by and through its attorneys Gardner Fulton & Waugh P.L.L.C., and respectfully moves as follows:

1. At the prehearing conference that was held on November 15, 2004 at the offices of DES, all parties were present and discussed a number of key issues in the two appeals that are referenced above.

2. There is a boundary line dispute between the parties that involves the shoreline of Gilman Pond, which has already been scheduled for a hearing at the Sullivan County Superior Court in May 2005. See Town of Newport v. Thaddeus Dymon, SCSC Docket No. 04-E-0029. Due to uncertainty related to that dispute regarding the amount of, and location of, land owned by the parties along the shoreline of the Pond, as well as the location of the low water mark, the hearing officer Mr. DiMarzio proposed suspending both appeals until these preliminary matters are determined by the Superior Court. Once determined, the pending appeals before the Water Council may proceed more efficiently and with far fewer issues in dispute.

3. The Town of Newport, Mr. Dymon and the State agreed to this proposal, with the Town of Newport instructed to file this Assented-to Motion to Stay the proceedings consistent with the discussion at the conference.

4. It was also agreed that, once there is a final ruling in the Superior Court case on the boundary line dispute, that decision will be filed with the Water Council so that another pre-hearing conference may be scheduled and the pending appeals brought forward.

5. The parties were instructed by the hearing officer that, until there is a decision by the Water Council on the pending appeals, the DES decision that is the subject of appeal would be stayed as well.


WHEREFORE, the Town of Newport respectfully requests that the Water Council:

A. Stay the appeals filed by the Town of Newport and Mr. Thaddeus Dymon in Docket Numbers 04-18 WC and 04-19 WC until there is a final ruling on the boundary lines in Town of Newport v. Thaddeus Dymon, SCSC Docket No. 04-E-0029;

B. And for such other and further relief as is just and equitable.

DATED this 24th day of November, 2004.

Respectfully Submitted,
THE TOWN OF NEWPORT
By its attorneys,


Adele M. Fulton, Esq.
GARDNER FULTON & WAUGH P.L.L.C.
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(603) 448-2221

Certificate

I hereby certify that, on this 24th day of November, 2004, a copy of the foregoing Assented-to Motion to Stay has been sent via first-class mail, postage prepaid, to Daniel G. Smith, Esq., attorney for the Respondent, and also to K. Allen Brooks, Esq., attorney for the State of New Hampshire.


Adele M. Fulton, Esq.